

OFFICIAL GAZETTE



GOVERNMENT OF GOA

NOTE:---There is one Extraordinary issue to the Official Gazette, Series I No. 21 dated 20-8-98 namely, Extraordinary dated 21-8-98 from pages 277 to 278 regarding Notifications from Department of Education (Directorate of Education) and Department of Finance (Revenue and Expenditure Division).

GOVERNMENT OF GOA

Department of Law & Judiciary

Legal Affairs Division

Notification

10/5/96/LA-Vol.II

The Depositories Related Laws (Amendment) Act, 1997 (Central Act 8 of 1997), which has been passed by Parliament and assented to by President of India on 19th March, 1997 and published in the Gazette of India, Extraordinary, Part II, Section I dated 19th March, 1997 is hereby published for the general information of the public.

P. V. Kadneker, Joint Secretary (Law).

Panaji, 3rd October, 1997.

THE DEPOSITORIES RELATED LAWS (AMENDMENT) ACT, 1997

AN

ACT

further to amend the Indian Stamp Act, 1899, the State Bank of India Act, 1955, the Companies Act, 1956, the State Bank of India (Subsidiary Banks) Act, 1959, the Industrial Development Bank of India Act, 1964, the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 and the Depositories Act, 1996.

Be it enacted by Parliament in the Forty-eighth Year of the Republic of India as follows:—

CHAPTER I

Preliminary

1. *Short title and commencement.*— (1) This Act may be called the Depositories Related Laws (Amendment) Act, 1997.

(2) It shall be deemed to have come into force on the 15th day of January, 1997.

CHAPTER II

Amendment to the Indian Stamp Act, 1899

2. *Amendment of section 8A of Act 2 of 1899.*— In section 8A of the Indian Stamp Act, 1899, for clause (d), the following clauses shall be substituted, namely:—

“(d) transfer of beneficial ownership of shares, such shares being shares of a company formed and registered under the Companies Act, 1956 or a body corporate established by a Central Act dealt with by a depository, shall not be liable to duty under article 62 of Schedule I of this Act; 1 of 1956.

(e) transfer of beneficial ownership of units, such units being units of a mutual fund including unit of the Unit Trust of India established under sub-section (1) of section 3 of the Unit Trust of India Act, 1963 dealt with by a depository, shall not be liable to duty under article 62 of Schedule I of this Act.” 52 of 1963.

CHAPTER III

Amendments to the State Bank of India Act, 1955

3. *Amendment of section 13.*— In section 13 of the State Bank of India Act, 1955 (hereafter in this Chapter referred to as the State Bank Act), in sub-section (1), the following proviso shall be inserted at the end, namely:—

“Provided that nothing in this sub-section shall apply to the shares held with a depository”.

4. *Insertion of new section 13A.*— After section 13 of the State Bank Act, the following section shall be inserted, namely:—

13A. “*Register of beneficial owners.*— The register of beneficial owners maintained by a depository under section 11 of the Depositories Act, 1996 shall be deemed to be a register of shareholders for the purposes of this Act.” 22 of 1996.

5. *Amendment of section 15.*— In section 15 of the State Bank Act, the following proviso and the *Explanation* shall be inserted at the end, namely:—

‘Provided that nothing in this section shall apply to a depository in respect of shares held by it as a registered owner on behalf of the beneficial owners.

Explanation.— For the purposes of section 13, section 13A and this section, the expressions “beneficial owner”, “depository” and “registered owner” shall have the meanings respectively assigned to them in clauses (a), (e) and (j) of sub-section (1) of section 2 of the Depositories Act, 1996.’

22 of 1996.

CHAPTER IV

Amendments to the State Bank of India (Subsidiary Banks) Act, 1959

6. *Amendment of section 21.*— In section 21 of the State Bank of India (Subsidiary Banks) Act, 1959 38 of 1959. (hereafter in this Chapter referred to as the Subsidiary Banks Act), the following proviso shall be inserted at the end, namely:—

“Provided that nothing in this section shall apply to the shares held with a depository.”

7. *Insertion of new section 21A.*— After section 21 of the Subsidiary Banks Act, the following section shall be inserted, namely:—

21A. “*Register of beneficial owners.*— The register of beneficial owners maintained by a depository under section 11 of the Depositories Act, 1996 22 of 1996. shall be deemed to be a register of shareholders for the purposes of this Act.”

8. *Amendment of section 22.*— In section 22 of the Subsidiary Banks Act, the following proviso and the *Explanation* shall be inserted at the end, namely:—

‘Provided that nothing in this section shall apply to a depository in respect of shares held by it as a registered owner on behalf of the beneficial owners.

Explanation.— For the purposes of section 21, section 21A and this section, the expressions “beneficial owner”, “depository” and “registered owner” shall have the meanings respectively assigned to them in clauses (a), (e) and (j) of sub-section (1) of section 2 of the Depositories Act, 1996.’

22 of 1996.

CHAPTER V

Amendments to the Companies Act, 1956

9. *Insertion of new section 83.*— After section 82 of the Companies Act, 1956 (hereafter in this Chapter referred to as the Companies Act), the following section shall be inserted, namely:—

“83. *Numbering of shares.*— Each share in a company having a share capital shall be distinguished by its appropriate number:

Provided that nothing in this section shall apply to the shares held with a depository.”

10. *Amendment of section 111A.*— In section 111A of the Companies Act, —

(a) in sub-section (2), the following proviso shall be inserted, namely:—

“Provided that if a company without sufficient cause refuse to register transfer of shares within two months from the date on which the instrument of transfer or the intimation of transfer, as the case may be, is delivered to the company, the transferee may appeal to the Company Law Board and it shall direct such company to register the transfer of shares.”;

(b) for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) The Company Law Board may, on an application made by a depository, company, participant or investor or the Securities Exchange Board of India, if the transfer of shares or debentures is in contravention of any of the provisions of the Securities and Exchange Board of India Act, 1992, 15 of 1992. or regulations made thereunder or the Sick Industrial Companies (Special Provisions) Act, 1985, or any other law for the time being in force, within two months from the date of transfer of any shares or debentures held by a depository or from the date on which the instrument of transfer or the intimation of the transmission was delivered to the company, as the case may be, after such inquiry as it thinks fit, direct any depository or company to rectify its register or records.”.

11. *Amendment of section 150.*— In section 150 of the Companies Act, in sub-section (1), in clause (b), after the words “the shares held by each member”, the words “distinguishing each share by its number except where such shares are held with a depository” shall be inserted.

12. *Amendment of section 152.*— In section 152 of the Companies Act, in sub-section (1), in clause (b), after the words “the debentures held by each member”, the words “distinguishing each debenture by its number except where such debentures are held with a depository” shall be inserted.

CHAPTER VI

Amendments to the Industrial Development Bank of India Act, 1964

13. *Amendment of section 13B.*— In section 13B of the Industrial Development Bank of India Act, 1964 (hereafter in this Chapter referred to as the Development Bank Act), in sub-section (1), the following proviso shall be inserted at the end, namely:— 18 of 1964.

“Provided that nothing in this sub-section shall apply to the shares held with a depository.”

14. *Insertion of new section 13 BA.*— After section 13B of the Development Bank Act, the following section shall be inserted, namely:—

“13 BA. *Register of beneficial owners.* — The register of beneficial owners maintained by a depository under section 11 of the Depositories Act, 1996 shall be deemed to be register of the 22 of 1996. shareholders for the purposes of this Act.”

15. *Amendment of section 13C.*— In section 13C of the Development Bank Act, the following proviso and the *Explanation* shall be inserted at the end, namely:—

“Provided that nothing in this section shall apply to a depository in respect of shares held by it as a registered owner on behalf of a beneficial owner.

Explanation.— For the purposes of section 13B, section 13BA and this section, the expressions “beneficial owner”, “depository” and “registered owner” shall have the meanings respectively assigned to them in clauses (a), (e) and (j) of sub-section (1) of section 2 of the Depositories Act, 1996.” 22 of 1996.

CHAPTER VII

Amendments to the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970

16. *Amendment of section 3.*— In section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (hereafter in this Chapter referred to as the Bank Nationalisation Act), in sub-section (2F), the following proviso shall be inserted at the end, namely:— 5 of 1970.

“Provided that nothing in this sub-section shall apply to the shares held with a depository.”

17. *Amendment of section 3A.*— In section 3A of the Bank Nationalisation Act, the following proviso shall be inserted at the end, namely:—

“Provided that nothing in this section shall apply to a depository in respect of shares held by it as a registered owner on behalf of the beneficial owners.”

18. *Insertion of new section 3B.*— After section 3A of the Bank Nationalisation Act, the following section shall be inserted, namely:—

“3B. *Register of beneficial owners.*— The register of beneficial owners maintained by a depository under section 11 of the Depositories Act, 1996, shall be deemed to be a register of 22 of 1996. shareholders for the purposes of this Act.

Explanation.— For the purposes of section 3, section 3A and this section, the expressions “beneficial owner”, “depository” and “registered owner” shall have the meanings respectively assigned to them in clauses (a), (e) and (y) of sub-section (1) of section 2 of the Depositories Act, 1996.” 22 of 1996.

CHAPTER VIII

Amendments to the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980

19. *Amendment of section 3.*— In section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 [hereafter in this Chapter referred to as the Bank (Second) Nationalisation Act], after sub-section (2F), the following proviso shall be inserted at the end, namely:— 40 of 1980.

“Provided that nothing in this sub-section shall apply to shares held with a depository.”

20. *Amendment of section 3A.*— In section 3A of the Bank (Second) Nationalisation Act, the following proviso shall be inserted at the end, namely:—

“Provided that nothing in this section shall apply to a depository in respect of shares held by it as a registered owner on behalf of the beneficial owners.”

21. *Insertion of new section 3B.*— After section 3A of the Bank (Second) Nationalisation Act, the following section shall be inserted, namely:—

“3B. *Register of beneficial owners.*— The register of beneficial owners maintained by a depository under section 11 of the Depositories Act, 1996, shall be deemed to be a register of shareholders for the purposes of this Act. 22 of 1996.

Explanation.— For the purposes of section 3, section 3A and this section, the expressions “beneficial owner”, “depository” and “registered owner” shall have the meanings respectively assigned to them in clauses (a), (e) and (j) of sub-section (1) of section 2 of the Depositories Act, 1996.” 22 of 1996.

CHAPTER IX

Amendment to the Depositories Act, 1996

22. *Amendment of section 9 of Act 22 of 1996.*— In section 9 of the Depositories Act, 1996 for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) Nothing contained in sections 153, 153A, 153B, 187B, 187C and 372 of the Companies Act, 1956 shall apply to a depository in respect of securities held by it on behalf of the beneficial owners.”

CHAPTER X

Miscellaneous

23. *Repeal and saving.*— (1) The Depositories Related Laws (Amendment) Ordinance, 1997 is hereby repealed. Ord. 5 of 1997.

(2) Notwithstanding such repeal, anything done or any action taken under the Indian Stamp Act, 1899, the State Bank of India Act, 1955, the Companies Act, 1956, the State Bank of India (Subsidiary Banks) Act, 1959, the Industrial Development Bank of India Act, 1964, the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 and the Depositories Act, 1996 as amended by the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of those Acts, as amended by this Act.

Notification

10/5/96/LA-Vol I

The Industrial Reconstruction Bank (Transfer of Undertakings and Repeal) Act, 1997 (Central Act 7 of 1997), which has been passed by Parliament and assented to by President of India on 19th March, 1997 and published in the Gazette of India, Extraordinary, Part II, Section I dated 19th March, 1997, is hereby published for the general information of the public.

P. V. Kadnekar, Joint Secretary (Law).

Panaji, 3rd October, 1997.

THE INDUSTRIAL RECONSTRUCTION BANK (TRANSFER OF UNDERTAKINGS AND REPEAL) ACT, 1997

AN

ACT

to provide for the transfer and vesting of the undertakings of the Industrial Reconstruction Bank of India to and in the Company to be formed and registered as a Company under the Companies Act, 1956, and for matters connected therewith or incidental thereto and also to repeal the Industrial Reconstruction Bank of India Act, 1984.

Be it enacted by Parliament in the Forty-eighth Year of the Republic of India as follows:—

CHAPTER I

Preliminary

1. *Short title and commencement.*— (1) This Act may be called the Industrial Reconstruction Bank (Transfer of Undertakings and Repeal) Act, 1997.

(2) It shall be deemed to have come into force on the 24th day of January, 1997.

2. *Definitions.*— In this Act, unless the context otherwise requires,—

(a) “appointed day” means such date as the Central Government may, by notification in the Official Gazette, appoint under section 3;

(b) “Company” means the Industrial Investment Bank of India Limited to be formed and registered under the Companies Act, 1956; 1 of 1956.

(c) “Reconstruction Bank” means the Industrial Reconstruction Bank of India established under sub-section (1) of section 3 of the Industrial Reconstruction Bank of India Act, 1984. 62 of 1984.

CHAPTER II

Transfer and vesting of the Undertakings of Reconstruction Bank in Company

3. *Undertakings of the Reconstruction Bank to vest in Company.*— On such date as the Central Government may, by notification in the Official Gazette, appoint, there shall be transferred to, and vest in, the Company, the undertakings of Reconstruction Bank.

4. *General effect of vesting of undertakings in Company.*— (1) The Central Government, being the shareholder of the Reconstruction Bank immediately before the appointed day, shall be deemed to be registered, on and from the appointed day, as a shareholder of the Company.

(2) The undertakings of the Reconstruction Bank which are transferred to, and which vest in, the Company under section 3 shall be deemed to include all business, assets, rights, powers, authorities and privileges and all properties, movable and immovable, real and personal, corporeal and incorporeal, in possession or reservation, present or contingent of whatever nature and wheresoever situate including lands, buildings, vehicles, cash balances, deposits, foreign currencies, disclosed and undisclosed reserves, reserve fund, special reserve fund, benevolent reserve fund, any other fund, stocks, investments, shares, bonds, debentures, security, management of any industrial concern, loans, advances and guarantees given to Industrial concerns tenancies, leases and book debts and all other rights and interests arising out of such property as were immediately before the appointed day in the ownership, possession or power of the Reconstruction Bank in relation to its undertakings, within or without India, all books of account, registers, records and documents relating thereto and shall also be deemed to include all borrowings, liabilities and obligations of whatever kind within or without India then subsisting of the Reconstruction Bank in relation to its undertakings.

(3) All contracts, deeds, bonds, guarantees, powers of attorney, other instruments and working arrangements subsisting immediately before the appointed day and affecting the Reconstruction Bank shall cease to have effect or to be enforceable against the Reconstruction Bank and shall be of as full force and effect against or in favour of the Company in which the undertakings of the Reconstruction Bank have vested by virtue of this Act and enforceable as fully and effectually as if instead of the Reconstruction Bank, the Company had been named therein or had been a party thereto.

(4) Any proceeding or cause of action pending or existing immediately before the appointed day by or against the Reconstruction Bank in relation to its undertakings may, as from the appointed day, be continued and enforced by or against the Company in which the undertakings of the Reconstruction Bank have vested by virtue of this Act as it might have been enforced by or against the Reconstruction Bank if this Act had not been enacted and shall cease to be enforceable by or against the Reconstruction Bank.

5. *Provisions in respect of officers and other employees of Reconstruction Bank.*— (1) Every officer or other employee of the Reconstruction Bank (except a Director of the Board or the Chairman and Managing Director) serving in the employment immediately before the appointed day shall, in so far as such officer or other employee is employed in connection with the undertakings which have vested in the Company by virtue of this Act, become, as from the appointed day, an officer or, as the case may be, other employee of the Company and shall hold his office or service therein by the same tenure, at the same remuneration, upon the same terms and conditions with the same obligations and with the same rights and privileges as to leave, leave fare concession, welfare scheme, medical benefit scheme, insurance, provident fund, other funds, retirement, voluntary retirement, gratuity and other benefits as he would have held under the Reconstruction Bank if its undertakings had not vested in the Company and shall continue to do so as an officer or, as the case may be, other employee of the Company or until the expiry of a period of six months from the appointed day if such officer or other employee opts not to continue to be the officer or other employee of the Company within such period.

(2) Where an officer or other employee of the Reconstruction Bank opts under sub-section (1) not to be in employment or service of the Company, such officer or other employee shall be deemed to have resigned.

(3) Notwithstanding anything contained in the Industrial Disputes Act, 1947 or in any other law for the time being in force, the transfer of the services of any officer or other employee of the Reconstruction Bank to the Company shall not entitle such officer or other employee to any compensation under this Act or under any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority.

(4) The officers and other employees who have retired before the appointed day from the service of the Reconstruction Bank and are entitled to any benefits, rights or privileges shall be entitled to receive the same benefits, rights or privileges from the Company.

(5) The trust of the provident fund or the gratuity fund of the Reconstruction Bank and any other bodies created for the welfare of officers or employees would continue to discharge their functions in the Company as was being done hitherto in the Reconstruction Bank and any tax exemption granted to the provident fund or the gratuity fund would continue to be applied to the Company.

(6) Notwithstanding anything contained in this Act or in the Companies Act, 1956 or in any other law for the time being in force or in the regulations of the Reconstruction Bank, no Director of the Board, Chairman and Managing Director or any other person entitled to manage the whole or substantial part of the business and affairs of the Reconstruction Bank shall be entitled to any compensation against the Reconstruction Bank or the Company for the loss of office or for the premature termination of any contract of management entered into by him with the Reconstruction Bank.

CHAPTER III

Miscellaneous

6. *Concession, etc., to be deemed to have been granted to Company.*— With effect from the appointed day, all fiscal and other concessions, licences, benefits, privileges and exemptions granted to the Reconstruction Bank in connection with the affairs and business of the Reconstruction Bank under any law for the time being in force shall be deemed to have been granted to the Company.

7. *Tax exemption or benefit to continue to have effect.*— (1) Notwithstanding anything contained in the Income-tax Act, 1961 or any other enactment for the time being in force relating to tax on income profits or gains, the Company shall not be liable to pay income-tax or any other tax for a period of five years computed from the appointed day in respect of any income, profits or gains derived, or any amount received by the Company.

(2) The transfer and vesting of the undertakings or any part thereof in terms of section 3 shall not be construed as a transfer within the meaning of the Income-tax Act, 1961 for the purposes of capital gains.

8. *Guarantee to be operative.*— Any guarantee given for or in favour of the Reconstruction Bank with respect to any loan, lease, finance or other assistance shall continue to be operative in relation to the Company.

2. *Arrangement with Company on appointment of directors to prevail.*— (1) Where any arrangement entered into by the company with an industrial or

other concern provides for the appointment by the company of one or more directors of such concern, such provision and any appointment of directors made in pursuance thereof shall be valid and effective notwithstanding anything to the contrary contained in the Companies Act, 1956 or in any other law for the time being in force or in the memorandum, articles of association or any other instrument relating to such concern, and any provision regarding share qualification, age limit, number of directorships, removal from office of directors and such like conditions contained in any such law or instrument aforesaid, shall not apply to any director appointed by the company in pursuance of the arrangement as aforesaid.

1 of 1956.

(2) Any director appointed in pursuance of sub-section (1) shall—

(a) hold office during the pleasure of the company and may be removed or substituted by any person by order in writing by the company;

(b) not incur any obligation or liability by reason only of his being a director or for anything done or omitted to be done in good faith in the discharge of his duties as a director or anything in relation thereto;

(c) not be liable to retirement by rotation and shall not be taken into account for computing the number of directors liable to such retirement.

10. *Act 18 of 1891 to apply to the books of Company.*— The Company shall be deemed to be a bank for the purposes of the Bankers' Books Evidence Act, 1891.

11. *Shares, bonds and debentures to be deemed to be approved securities.*— Notwithstanding anything contained in any other law for the time being in force the shares, bonds and debentures of the Company shall be deemed to be approved securities for the purposes of the Indian Trusts Act, 1882 the Insurance Act, 1938 and the Banking Regulation Act, 1949.

2 of 1982.
4 of 1938.
10 of 1949.

12. *Substitution in Acts, rules or regulations of company in place of the Reconstruction Bank.*— In every Act, rule or regulation in force on the appointed day,—

(a) for the words "Industrial Reconstruction Bank of India", wherever they occur, the words "Industrial Investment Bank of India Limited" shall be substituted;

(b) for the words "Reconstruction Bank", wherever they occur the words "Industrial Investment Bank" shall be substituted.

13. *Repeal and saving of Act 62 of 1984.*— (1) On the appointed day, the Industrial Reconstruction Bank of India Act, 1984 shall stand repealed.

(2) Notwithstanding the repeal of the Industrial Reconstruction Bank of India Act, 1984,—

(a) the Company shall, so far as may be, comply with the provisions of Chapter VII of the Act so repealed for any of the purposes related to the annual accounts and audit of the Reconstruction Bank;

(b) the provisions of Chapter VIII of the Act so repealed will continue to be applicable in respect of the arrangements entered into by the Reconstruction Bank with an Industrial concern under section 18 thereof up to the appointed day and the Company will be entitled to act upon and enforce the same as fully and effectually as if this Act had not been enacted.

CHAPTER IV

Amendment to the Industrial Reconstruction Bank of India Act, 1984

14. *Insertion of new section 4A.*— In the Industrial Reconstruction Bank of India Act, 1984, 62 of 1984, after section 4, the following section shall be inserted, namely:—

"4A. *Transitional provisions regarding adjustment of capital of the Reconstruction Bank.*— (1) The Central Government may reduce share capital of the Reconstruction Bank by,—

(a) extinguishing or reducing the liability of any of its equity shares;

(b) either with or without extinguishing or reducing liability on any of its equity shares, cancelling any paid up share capital which is lost, or is unrepresented by available assets; or

(c) either with or without extinguishing or reducing liability on any of its equity shares, paying of any paid up share capital which is in excess of the wants of the Reconstruction Bank.

(2) The Central Government may at any time, by notification in the Official Gazette, convert such number of equity shares held by it, as it may decide into redeemable preference shares.

(3) The redeemable preference shares referred to in sub-section (2) shall carry such fixed rates of dividend as the Central Government may specify at the time of such conversion."

15. *Repeal and Saving.*— (1) The Industrial Reconstruction Bank (Transfer of Undertakings and Repeal) Ordinance, 1997 is hereby repealed.

Ord. 7 of
1997.

(2) Notwithstanding such repeal, anything done or any action taken under the Ordinance so repealed, shall be deemed to have been done or taken under the corresponding provisions of this Act.

Notification

10-5-96/LA-Vol I

The Port Laws (Amendment) Act, 1997 (Central Act 15 of 1997) which has been passed by Parliament and assented to by President of India on 25th March, 1997 and published in the Gazette of India, Extraordinary, Part II, Section I, dated 25th March, 1997 is hereby published for the general information of the public.

P. V. Kadneker, Joint Secretary (Law).

Panaji, 14th October, 1997.

THE PORT LAWS (AMENDMENT) ACT, 1997

AN

ACT

further to amend the Indian Ports Act, 1908 and the Major Port Trusts Act, 1963.

Be it enacted by Parliament in the Forty-eighth Year of the Republic of India as follows:-

CHAPTER I

Preliminary

1. *Short title and commencement.* — (1) This Act may be called the Port Laws (Amendment) Act, 1997.

(2) It shall be deemed to have come into force on the 9th day of January, 1997.

CHAPTER II

Amendments to the Indian Ports Act, 1908

2. *Amendment of section 3.* — In section 3 of the Indian Ports Act, 1908 (hereafter in this Chapter referred to as the Ports Act), for clause (1), the following clause shall be substituted, namely:—

“(1) “Magistrate” means a person exercising powers under the Code of Criminal Procedure, 1973;” 15 of 1908. 2 of 1974.

3. *Amendment of section 6.* — In section 6 of the Ports Act, in sub-section (1),—

(i) in clause (j), after the words “rates to be paid”, the words “in a port other than a major port” shall be inserted;

(ii) for clause (jj), the following clauses shall be substituted, namely:—

“(jj) for regulating the use of piers, jetties, landing places, wharves, quays, warehouses and sheds when belonging to the Government;

(jja) for fixing the rates to be paid for the use of piers, jetties, landing places, wharves, quays, warehouses and sheds of any port, other than a major port, when belonging to the Government;”;

(iii) for clause (k), the following clauses shall be substituted, namely:—

“(k) for licensing and regulating catamarans plying for hire, and flats and cargo, passenger and other boats plying, whether for hire or not, and whether regularly or only occasionally, in or partly within and partly without any such port, and for licensing and regulating the crews of any such vessels; and for determining the quantity of cargo or number of passengers or of the crew to be carried by any such vessels and the conditions under which such vessels shall be compelled to ply for hire and further for conditions under which any licence may be revoked;

(kk) for providing for the fees payable in respect of the services specified in clause (k) for any port, other than a major port;”.

4. *Amendment of section 33.* — In section 33 of the Ports Act,—

(a) in sub-section (1), after the words “in each of the ports mentioned in the First Schedule”, the words “other than a major port” shall be inserted;

(b) in sub-section (3), after the words “declares any other port”, the words “other than a major port” shall be inserted.

5. *Substitution of new section for section 34.* — For section 34 of the Ports Act, the following section shall be substituted, namely:—

“34. *Variation of port dues by Government.* — The Government may after consulting,—

(a) in case of ports other than major ports, the authority appointed under section 36;

(b) in case of major ports, the Authority constituted under section 47A of the Major Port Trusts Act, 1963,

38 of 1963.

exempt, subject to such conditions, if any, as it thinks fit to impose, any vessel or class of vessels entering a port subject to this Act from payment of port-dues and cancel the exemption, or may vary the rates at which port-dues are to be fixed in the port, in such manner as, having regard to the receipts and charges on

account of the port, it thinks expedient, by reducing or raising the dues, or any of them or may extend the periods for which any vessel of class of vessels entering a port shall be exempt from liability to pay port-dues:-

Provided that the rates shall not in any case exceed the amount authorised to be taken by or under this Act.”

6. *Amendment of section 35.*— In section 35 of the Ports Act, in sub-section (1), after the words “Within any port subject to this Act”, the words “not being a major port” shall be inserted.

7. *Amendment of section 46.*— In section 46 of the Ports Act, after the words “A vessel entering any port”, the words “not being a major port” shall be inserted.

8. *Amendment of section 47.*— In section 47 of the Ports Act, after the words “When a vessel enters a port”, the words “not being a major port” shall be inserted.

9. *Amendment of First Schedule.*— In the First Schedule to the Ports Act, in Part I, entries under columns 2, 3 and 4 shall be omitted.

CHAPTER III

Amendments to the Major Port Trusts Act, 1963

10. *Amendment of section 2.*— In section 2 of the Major Port Trusts Act, 1963 (hereafter in this Chapter referred to as the Major Port Act), after clause (a), the following clause shall be inserted, namely:—

“(aa) “Authority” means the Tariff Authority for Major Ports constituted under section 47A;”.

11. *Amendment of section 29.*— In section 29 of the Major Port Act, after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) Notwithstanding anything contained in clause (a) of sub-section (1), the right to fix rates vested in the Board shall vest in the Authority as from the date it is constituted under sub-section (1) of section 47A.”.

12. *Amendment of section 42.*— In section 42 of the Major Port Act, in sub-section (4), for the words and figures “leviable according to the scale framed under section 48 or section 49 or section 50”, the words “specified by the Authority, by notification in the Official Gazette” shall be substituted.

13. *Amendment of section 47.*— In section 47 of the Major Port Act, in sub-section (3), in clause (i), for the words and figures “The Arbitration Act, 1940”, the words and figures “The Arbitration and Conciliation Act, 1996” shall be substituted.

14. *Insertion of new Chapter VA.*— After Chapter V of the Major Port Act, the following Chapter shall be inserted, namely:—

“CHAPTER VA

Tariff Authority for Major Ports

47A. *Constitution and incorporation of Tariff Authority for Major Ports.*— (1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint there shall be constituted for the purposes of this Act an Authority to be called the Tariff Authority for Major Ports.

(2) The Authority shall be a body corporate by the name aforesaid having perpetual succession and a common seal and shall by the said name sue and be sued.

(3) The head office of the Authority shall be at such place as the Central Government may decide from time to time.

(4) The Authority shall consist of the following Members to be appointed by the Central Government, namely:—

(a) a Chairperson from amongst persons who is or who has been a Secretary to the Government of India or has held any equivalent post in the Central Government and who has experience in the management and knowledge of the functioning of the ports;

(b) a Member from amongst economists having experience of not less than fifteen years in the field of transport or foreign trade;

(c) a Member from amongst persons having experience of not less than fifteen years in the field of finance with special reference to investment or cost analysis in the Government or in any financial institution or industrial or services sector.

47B. *Term of office, conditions of service, etc., of Chairperson and other Members.*— (1) The Chairperson or a Member shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty-five years, whichever is earlier.

(2) The salaries and allowances payable to and other conditions of service of the Chairperson and the other Members shall be such as may be prescribed by the Central Government.

(3) Notwithstanding anything contained in sub-section (1), the Chairperson or a Member may.—

(a) relinquish his office by giving in writing to the Central Government a notice of not less than three months; or

(b) be removed from his office in accordance with the provisions of section 47D.

(4) If a casual vacancy occurs in the office of the Chairperson or any Member, whether by reason of his death, resignation or inability to discharge his functions owing to illness or other incapacity, such vacancy shall be filled up by the Central Government by making a fresh appointment and the Chairperson or the Member so appointed shall hold office for

the remainder of the term of office of the person in whose place he is so appointed.

47C. Disqualification for the office of Chairperson and Member.— A person shall be disqualified for being appointed as a Chairperson or as a Member of the Authority if he is disqualified for being chosen as a Trustee under section 6.

47D. Removal, etc., of Chairperson and Members.— (1) The Central Government shall remove from the Authority the Chairperson or any Member, if he—

(a) becomes subject to any disqualification under section 47C;

(b) refuses to act or becomes incapable of acting;

(c) in the opinion of the Central Government has so abused his position as to render his continuance in office detrimental to the public interest, or

(d) is otherwise unsuitable to continue as the Chairperson or as a Member,

(2) The Central Government may suspend the Chairperson or any Member pending an inquiry against him.

(3) No order of removal under this section shall be made unless the Chairperson or the Member concerned, as the case may be, has been given an opportunity to submit his explanation to the Central Government and when such order is passed, the seat of the Chairperson or Member removed shall be declared vacant.

(4) The Chairperson or a Member who has been removed under this section shall not be eligible for re-appointment as a Chairperson or as a Member or in any other capacity under the Authority.

47E. Meetings.— The Authority shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be specified by regulations.

47F. Authentication of all orders and decisions of the Authority.— All orders and decisions of the Authority shall be authenticated by the signature of the Chairperson or any other Member authorised by the Authority in this behalf.

47G. Vacancy, etc. not to invalidate proceedings of the Authority.— No act or proceeding of the Authority shall be invalidated merely by reason of—

(a) any vacancy in, or any defect in, the constitution of the Authority; or

(b) any defect in the appointment of a person acting as a Chairperson or a Member of the Authority; or

(c) any irregularity in the procedure of the Authority not affecting the merits of the case.

47H. Officers and employees of the Authority.— (1) The Authority may appoint officers and such other employees as it considers necessary for the efficient discharge of its functions under this Act.

(2) The salary and allowances payable to and the other conditions of service of the officers and other employees of the Authority appointed under sub-section (1) shall be such as may be specified by regulations.”

15. Amendment of section 48.— In section 48 of the Major Port Act, in sub-section (1),—

(a) for the opening portion, following shall be substituted, namely:—

“The Authority shall from time to time, by notification in the Official Gazette, frame a scale of rates, at which, and a statement of conditions under which, any of the services specified hereunder shall be performed by a Board or any other person authorised under section 42 at or in relation to the port or port approaches—”;

(b) in clause (e), the words “excepting the services in respect of vessels for which fees are chargeable under the Indian Ports Act” shall be omitted.

16. Amendment of section 49.— In section 49 of the Major Port Act, in sub-section (1), for the opening portion, the following shall be substituted, namely:—

“The Authority shall from time to time, by notification in the Official Gazette, also frame a scale of rates on payment of which, and a statement of conditions under which, any property belonging to, or in the possession or occupation of, the Board, or any place within the limits of the port or the port approaches may be used for the purposes specified hereunder:—”.

17. Insertion of new sections 49A and 49B.— After section 49 of the Major Port Act, the following sections shall be inserted, namely:—

“49A. Fees for pilotage and certain other services.— (1) Within any port, fees may be charged for pilotage, hauling, mooring, re-mooring, hooking, measuring and other services rendered to vessels, at such rates as the Authority may fix.

(2) The fees now chargeable for such services shall continue to be chargeable unless and until they are altered in exercise of the power conferred by sub-section (1).

(3) The Central Government may, in special cases, remit the whole or any portion of the fees chargeable under sub-section (1) or sub-section (2).

49B. Fixation of port-dues.— (1) The Authority shall from time to time, by notification in the Official Gazette, fix port-dues on vessels entering the port.

(2) An order increasing or altering the fees for pilotage and certain other services or port-dues at every port shall not take effect

until the expiration of thirty days from the day on which the order was published in the Official Gazette.”.

18. *Substitution of section 50 and insertion of new sections 50A, 50B and 50C.* — For section 50 of the Major Port Act, the following sections shall be substituted, namely:—

“50. *Consolidated rates for combination of services.* — The Authority may, from time to time, by notification in the Official Gazette, frame a consolidated scale of rates for any combination of service specified in section 48 or for any combination of such service or services with any user or permission to use any property belonging to or in the possession or occupation of the Board, as specified in section 49 or the fees to be charged for pilotage, hauling, mooring re-mooring booking, measuring and other services rendered to vessels as specified in section 49A or the port-dues to be fixed on vessels entering the port and for the duration of such dues as specified in section 49B.

50A. *Port-due on vessels in ballast.*— A vessel entering any port in ballast and not carrying passengers shall be charged with a port-due at a rate to be determined by the Authority and not exceeding three-fourths of the rate with which she would otherwise be chargeable.

50B. *Port-due on vessels not discharging or taking in cargo.* — When a vessel enters a port but does not discharge or take in any cargo or passengers therein (with the exception of such unshipment and reshipment as may be necessary for purposes of repair), she shall be charged with a port-due at a rate to be determined by the Authority and not exceeding half the rate with which she would otherwise be chargeable.

50C. *Publication of orders of Authority.*— Every notification, declaration, order and regulation of the Authority made in pursuance of this Act shall be published in the Official Gazette and a copy thereof shall be kept in the office of the conservator and at the custom-house, if any, of every port to which the declaration, order or rule relates, and shall there be open at all reasonable times to the inspection of any person without payment of any fee.”.

19. *Amendment of section 51.*— In section 51 of the Major Port Act, for the word “Board” in both the places where it occurs, the word “Authority” shall be substituted.

20. *Omission of section 52.*— Section 52 of the Major Port Act shall be omitted.

21. *Amendment of section 54.*— In section 54 of the Major Port Act,—

(a) in sub-section (1), for the words “direct any Board”, the words “direct the Authority” shall be substituted;

(b) in sub-section (2),—

(i) for the words, brackets and figure “If any Board against whom a direction is under sub-section (1) fails or neglects to comply with such direction”, the words, brackets and figure “If the Authority fails or neglects to comply with the direction under sub-section (1)” shall be substituted;

(ii) in the proviso, for the words “the Board”, the words “the Authority” shall be substituted.

22. *Amendment of section 57.*— In section 57 of the Major Port Act, for the words “A Board shall not be lease”, the words “The Authority shall not lease” shall be substituted.

23. *Amendment of section 59.*— In section 59 of the Major Port Act, in sub-section (1) for the words “leviable by a Board under this Act”, the words “leviable under this Act” shall be substituted.

24. *Insertion of new section 110A.*— After section 110 of the Major Port Act, the following section shall be inserted, namely:—

“110A. *Power of Central Government to supersede the Authority.*— (1) If the Central Government is of the opinion that the Authority is unable to perform, or has persistently made default in the performance of, the duty imposed on it by or under this Act or has exceeded or abused its powers, or has wilfully or without sufficient cause, failed to comply with any direction issued by the Central Government under section 111, the Central Government may, by notification in the Official Gazette, supersede the Authority for such period as may be specified in the notification:

Provided that, before issuing a notification under this sub-section, the Central Government shall give reasonable opportunity to the Authority to show cause why it should not be superseded and shall consider the explanation and objections, if any, of the Authority.

(2) Upon the publication of a notification under sub-section (1) superseding the Authority,—

(a) the Chairperson and the Members of the Authority shall, notwithstanding that their term of office has not expired as from the date of supersession, vacate their offices as such Chairperson or Members as the case may be;

(b) all the powers and duties which may, by or under the provisions of this Act, be exercised or performed by or on behalf of the Authority shall, during the period of supersession, be exercised and performed by such person or persons as the Central Government may direct.

(3) On the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government may—

(a) extend the period of supersession for such further period as it may consider necessary; or

(b) reconstitute the Authority in the manner provided in section 47A”.

25. *Amendment of section 111.*— In section 111 of the Major Port Act, for sub section (1), the following sub-section shall be substituted, namely:—

“(1) Without prejudice to the foregoing provisions of this Chapter, the Authority and every Board shall, in the discharge of

its functions under this Act be bound by such directions on questions of policy as the Central Government may give in writing from time to time:—

Provided that the Authority or the Board, as the case may be, shall be given opportunity to express its views before any direction is given under this sub-section.”

26. *Substitution of new section for section 112.*— For section 112 of the Major Port Act, the following section shall be substituted, namely:—

“112. *Every person employed by the authority of this Act to be a public servant.*— Every person employed by the Authority or by a Board under this Act shall, for the purposes of sections 166 to 171 (both inclusive), 184, 185 and 409 of the Indian Penal Code and for the purposes of the Prevention of Corruption Act, 1988 be deemed to be a public servant within the meaning of section 21 of the said Code.”

27. *Amendment of section 121.*— In section 121 of the Major Port Act, for the words “against a Board or any member”, the words “against the Authority a Board or any member” shall be substituted.

28. *Amendment of section 122.*— In section 122 of the Major Port Act, in sub section (1), after clause (b), the following clause shall be inserted, namely:—

“(ba) the salaries, allowances payable to and the other terms and conditions of the Chairperson and members of the Authority;”

29. *Insertion of new section 123A.*— After section 123 of the Major Port Act, the following section shall be inserted, namely:—

“123A. *Power of Authority to make regulations.*— The Authority may make regulations consistent with this Act for all or any of the following purposes, namely:—

(a) the times and places of meetings of the Authority and the procedure to be followed at such meetings under section 47E;

(b) the salaries and allowances payable to and the other conditions of service of officers and other employees of the Authority under sub-section (2) of section 47H”.

30. *Amendment of section 132.*— In section 132 of the Major Port Act, —

(a) in sub-section (1), —

(i) in the opening portion, for the words “made by a Board or by the Central Government”, the words “made by a Board or the Authority or the Central Government” shall be substituted;

(ii) in clause (b), for the words “made by the Central Government”, the words “made by the Authority or the Central Government” shall be substituted;

(b) in sub-section (2), for the words “made be the Central Government”, the words “made by the Authority or the Central Government” shall be substituted.

CHAPTER IV

Miscellaneous

31. *Repeal and saving.* — (1) The Port Laws (Amendment) Ordinance, 1997 is hereby repealed. Ord. 1 of 1997.

(2) Notwithstanding such repeal, anything done or any action taken under the Indian Ports Act, 1908 and the Major Port Trusts Act, 1963 as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of those Acts, as amended by this Act. 15 of 1908. 38 of 1963.

Notification

10-5-96/LA-Vol.II

The Essential Commodities (Special Provisions) Ordinance, 1997 (Ordinance No. 21 of 1997) which has been promulgated by the President of India and published in the Gazette of India, Extraordinary, Part II, Section I dated 3rd October, 1997, is hereby published for general information of the public.

P. V. Kadnekar, Joint Secretary (Law).

Panaji, 3rd November, 1997.

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 3rd October, 1997/Asvina 11, 1919 (Saka)

THE ESSENTIAL COMMODITIES (SPECIAL PROVISIONS) ORDINANCE, 1997

No.21 of 1997

Promulgated by the President in the Forty-eighth Year of the Republic of India.

An Ordinance to make certain special provisions by way of amendments to the Essential Commodities Act, 1955, for a temporary period for dealing more effectively with persons indulging in hoarding and blackmarketing of, and profiteering in, essential commodities and for matters connected therewith or incidental thereto.

Whereas for ensuring the availability of essential commodities at fair prices, it is necessary to curb the hoarding and back-marketing of, and profiteering in, such commodities;

And Whereas for dealing more effectively with persons indulging in such anti-social activities, it is necessary to make certain special provisions by way of amendments to the Essential Commodities Act, 1955, for a temporary period; 10 of 1955.

And Whereas a Bill further to amend the Essential Commodities (Special Provisions) Act, 1981 and to make special provisions by way of amendment to the Essential Commodities Act, 1955 to achieve the above objects was introduced in Parliament but has not yet been passed; 18 of 1981. 10 of 1955.

And Whereas Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, Therefore, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. *Short title and commencement.*— (1) This Ordinance may be called the Essential Commodities (Special Provisions) Ordinance, 1997.

(2) It shall come into force at once except in the States of Arunachal Pradesh, Mizoram and the Union territories of Andaman and Nicobar Islands, Dadra and Nagar Haveli and Lakshadweep; and in these States and Union territories on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different States and Union territories, and any reference to the commencement of this Ordinance or any provision thereof shall be construed in relation to each State and Union territory, as a reference, to the coming into force of this Ordinance in that State or Union territory.

2. *Act 10 of 1955 to have effect subject to certain special provisions for a temporary period.*— During the period of operation of this Ordinance, the Essential Commodities Act, 1955 (hereinafter referred to as the principal Act) shall have effect subject to the amendments specified in sections 3 to 11:

Provided that the amendments specified in sections 5 to 10 shall not apply to, or in relation to, any offence under the principal Act committed before the commencement of this Ordinance and the provisions of the principal Act shall apply to, and in relation to, such offences as if those amendments had not been made.

3. *Amendment of section 2.*— In section 2 of the principal Act,—

(a) clause (ia) shall be re-numbered as clause (iia), and before clause (iia) as so re-numbered, the following clause shall be inserted, namely:—

“(ia) “Code” means the Code of Criminal Procedure, 1973;” and 2 of 1974.

(b) after clause (e), the following clause shall be inserted, namely:—

“(f) words and expressions used but not defined in this Act and defined in the Code shall have the meanings respectively assigned to them in the Code.”.

4. *Amendment of section 6A.*— In section 6A of the principal Act, for the proviso to sub-section (2), the following proviso shall be substituted, namely:—

“Provided that in the case of any such essential commodity the retail sale price whereof has been fixed by the Central Government or a State Government under this Act or under any other law for the time being in force, the Collector may, for its equitable distribution and availability at fair prices, order the same to be sold through fair price shops at the price so fixed.”.

5. *Amendment of section 7.*— In section 7 of the principal Act,—

(a) in sub-section (1), the proviso to sub-clause (ii) of clause (a) shall be omitted;

(b) the proviso to sub-section (2) shall be omitted;

(c) the proviso to sub-section (2A) shall be omitted;

(d) sub-section (2B) shall be omitted.

6. *Amendment of section 8.*— To section 8 of the principal Act, the following proviso shall be added, namely:—

“Provided that when a person has abetted the contravention of any order of the purpose of procuring any essential commodity of the nature mentioned in sub-clause (iva) or sub-clause (v) of clause (a) of section 2 for his own use or for the use of any member of his family or for the use of any person dependent on him, and not for the purpose of carrying on any business or trade in such essential commodity, the court may, notwithstanding anything contained in section 7 and for reasons to be mentioned in the judgment, impose a sentence of fine only.”.

7. *Amendment of section 10A.*— For section 10A of the principal Act, the following section shall be substituted, namely:—

“10A. *Provision as cognizance a bail.*— Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence punishable under:—

2 of 1974.

(a) this Act shall be cognizable;

(b) this Act except the offence punishable under sub-clause (i) of clause (a) of sub-section (1) of section 7 shall be non-bailable;

(c) sub-clause (i) of clause (a) of sub-section (1) if committed more than once shall be non-bailable.”.

8. *Insertion of new section 10AA.*— After section 10A of the principal Act, the following section shall be inserted, namely:—

“10AA. *Power to arre.*— Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no officer below the rank of an officer-in-charge 2 of 1974.

of a police station or any police officer authorised by him in this behalf in writing, shall arrest any person accused of committing an offence punishable under this Act.”.

9. *Omission of section 12.*— Section 12 of the principal Act shall be omitted.

10. *Substitution of new section for section 12.*— For section 12A of the principal Act, the following section shall be substituted, namely:—

“12A. *Constitution of Special Court.*— (1) The State Government may, for the purpose of providing speedy trial of the offences under this Act, by notification in the Official Gazette, constitute as many Special Courts as may be necessary for such area or areas as may be specified in the notification.

(2) A Special Court shall consist of a single judge who shall be appointed by the High Court upon a request made by the State Government.

Explanation.— In this sub-section, the word “appoint” shall have the meaning given to it in the *Explanation* to section 9 of the Code.

(3) A person shall not be qualified for appointment as a judge of a Special Court unless—

(a) he is qualified for appointment as a judge of High Court, or

(b) he has, for a period of not less than one year, been a Sessions Judge or an Additional Sessions Judge.

12AA. *Offences triable by Special Courts.*— (1) Notwithstanding anything contained in the Code,—

(a) all offences under this Act shall be triable only by the Special Court constituted for the area in which the offence has been committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court;

(b) where a person accused of or suspected of the commission of an offence under this Act is forwarded to a Magistrate under sub-section (2) or sub-section (2A) of section 167 of the Code, such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate;

Provided that where such Magistrate considers.—

(i) when such person is forwarded to him as aforesaid; or

(ii) upon or at any time before the expiry of the period of detention authorised by him;

that the detention of such person is unnecessary, he may, if he is satisfied that the case falls under the proviso to section 8, order the release of such person on bail and if he is not so satisfied, he shall order such person to be forwarded to the Special Court having jurisdiction;

(c) the Special Court may, subject to the provisions of clause (d) of this sub-section, exercise, in relation to the person forwarded to it under clause (b), the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code in relation to an accused person in such case who has been forwarded to him under that section;

(d) save as aforesaid no person accused of or suspected of the commission of an offence under this Act shall be released on bail by any court other than a special Court or the High Court;

(e) a Special Court may, upon a perusal of police report of the facts constituting an offence under this Act take cognizance of that offence without the accused being committed to it for trial;

(f) all offences under this Act shall be tried in a summary way and the provisions of sections 262 to 265 (both inclusive) of the Code shall, as far as may be, apply to such trial:

Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the Special Court to pass a sentence of imprisonment for a term not exceeding two years.

(2) When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act, with which the accused may, under the Code, be charged at the same trial:

Provided that such other offence is, under any other law for the time being in force, triable in a summary way:

Provided further that in the case of any conviction for such other offence in such trial, it shall not be lawful for the Special Court to pass a sentence of imprisonment for a term exceeding the term provided for conviction in a summary trial under such other law.

(3) A Special Court may, with a view to obtaining the evidence of any person suspected to have been directly or indirectly concerned in, or privy to, an offence under this Act, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned whether as principal or abettor in the commission thereof and any pardon so tendered shall, for the purposes of section 308 of the Code, be deemed to have been tendered under section 307 thereof.

(4) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to “Magistrate” in that section included also a reference to a “Special Court” constituted under section 12A.

12AB. *Appeal and revision.*—The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Sessions trying cases within the local limits of the jurisdiction of the High Court.

12AC. *Application of Code to proceedings before a Special Court.*—Save as otherwise provided in this Act, the provisions of the Code (including the provisions as to bail and bonds) shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Sessions and the person conducting a prosecution before a Special Court, shall be deemed to be a Public Prosecutor.

11. *Insertion of new section 15AA.*—After section 51A of the principal Act, the following section shall be inserted namely:—

“15AA. *Transfer of cases.*—Notwithstanding anything contained in any other law, any prosecution in respect of any offence under the principal Act, committed during the period commencing on the 1st day September, 1997, and ending with the date of commencement of this Ordinance, shall be instituted only in the Special Court and any prosecution in respect of such offence pending in any court shall stand transferred to the Special Court.”

K. R. NARAYANAN.

President.

K. L. MOHANPURIA,
Secy. to the Govt. of India.

Notification

10-4-98/LA

The Merchant Shipping (Amendment) Ordinance, 1998 (Ordinance No: 7 of 1998) which has been promulgated by the President of India and published in the Gazette of India, Extraordinary, Part II Section I dated 23rd April, 1998, is hereby published for the general information of the public.

P. V. Kadnekar, Joint Secretary (Law).

Panaji, 20th May, 1998.

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 23rd April, 1998/Vaisakha 3, 1920 (Saka)

THE MERCHANT SHIPPING (AMENDMENT) ORDINANCE, 1998

No. 7 of 1998

Promulgated by the President in the Forty-ninth Year of the Republic of India.

An Ordinance further to amend the Merchant Shipping Act, 1958.

Whereas the Merchant Shipping (Amendment) Ordinance, 1997 to further amend the Merchant Shipping Act, 1958 was promulgated by the President on the 26th day of September, 1997;

And Whereas the Merchant Shipping (Amendment) Ordinance, 1997 could not be replaced by an Act of Parliament due to the dissolution of the House of the People;

And Whereas for giving continued effect to the provisions of the said Ordinance, the Merchant Shipping (Amendment) Second Ordinance, 1997 was promulgated by the President on the 25th day of December, 1997;

And Whereas Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give continued effect to the provisions of the Merchant Shipping (Amendment) Second Ordinance, 1997;

Now, Therefore, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance.—

1. *Short title and commencement.*—(1) This Ordinance may be called the Merchant Shipping (Amendment) Ordinance, 1998.

(2) It shall be deemed to have come into force on the 26th day of September, 1997.

2. *Amendment of section 89.*—In section 89 of the Merchant Shipping Act, 1958 (hereinafter 44 of 1958, referred to as the Principal Act, after clause (d), the following clause shall be inserted, namely:—

“(dd) to transmit the complaint of any dispute of a foreign seaman of a vessel, registered in a country other than India, in Indian territorial waters, with the master, owner or agent, to the competent authority of the country of registration and a copy of such complaint shall be forwarded to the Director General, International Labour Organisation Office;”

3. *Amendment of section 132.*—In section 132 of the Principal Act, after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A). Any complaint of dispute, received by the Shipping master from an Indian seaman, on a vessel registered in a country other than India, in Indian territorial waters, with the master, owner or agent.”

4. *Insertion of new section 138A.*—After section 138 of the principal Act, the following section shall be inserted, namely:—

“138A. *Working hours of seamen.*—The ordinary hours of work for all seamen shall not exceed forty-eight hours in a week.”

5. *Amendment of section 369.*— In section 369 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) The Central Government shall on receipt of the investigation report from the court, cause it to be published in the Official Gazette.

6. *Amendment of section 436.*— In section 436 of the principal Act, in sub-section (2), in the table, after Serial Number 42 and the entries relating thereto, the following shall be inserted, namely:—

1	2	3	4
42A	If the master or owner contravenes the provisions of section 138A.	138A	Fine which may extend to double the average wages per hour payable to the seaman for working beyond forty-eight hours.”.

7. *Repeal and saving.*— (1) The Merchant Shipping (Amendment) Second Ordinance, 1997, is hereby repealed. Ord. 27 of 1997.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act, as amended by this Ordinance.

K. R. NARAYANAN,
President.

RAGHBIR SINGH,
Secy. to the Govt. of India.

Notification

10-4-98/LA

The Employees Provident Fund and Miscellaneous Provisions (Amendment) Ordinance, 1998 (Ordinance No. 8 of 1998) which has been promulgated by the President of India and published in the Gazette of India, Extraordinary, Part II, Section I, dated 23rd April, 1998, is hereby published for general information of the public.

P. V. Kadnekar, Joint Secretary (Law).

Panaji, 21st May, 1998.

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 23rd April, 1998/Vaisakha 3, 1920 (Saka)

THE EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS (AMENDMENT) ORDINANCE, 1998

No. 8 of 1998

Promulgated by the President in the Forty-ninth Year of the Republic of India.

An Ordinance further to amend the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

Whereas a Bill further to amend the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, was introduced in the Council of States but has not yet been passed;

And Whereas the Employees' Provident Funds and Miscellaneous Provisions (Amendment) Ordinance, 1997 to give effect to the provisions of the said Bill was promulgated by the President on the 22nd day of September, 1997;

And Whereas the House of the People had been dissolved and the Employees' Provident Funds and Miscellaneous Provisions (Amendment) Second Ordinance, 1997 to give continued effect to the provisions of the said Ordinance was promulgated by the President on the 25th day of December, 1997;

And Whereas Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give continued effect to the provisions of the Employees' Provident Funds and Miscellaneous Provisions (Amendment) Second Ordinance, 1997;

Now, Therefore, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. *Short title and commencement.*— (1) This Ordinance may be called the Employees' Provident Funds and Miscellaneous Provisions (Amendment) Ordinance, 1998.

(2) It shall be deemed to have come into force on the 22nd day of September, 1997.

2. *Amendment of section 6.*— In section 6 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the principal Act) for the words “eight and one-third per cent.” and “ten per cent.” wherever they occur the words “ten per cent.” and “twelve per cent.” shall respectively be substituted.

3. *Amendment of section 7D.*— in section 7D of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) A person shall not be qualified for appointment as a Presiding Officer of a Tribunal (hereinafter referred to as the Presiding Officer) unless he is, or has been, or is qualified to be,—

(i) a Judge of a High Court; or

(ii) a district judge.”.

4. *Amendment of section 7F.*— Section 7F of the principal Act shall be re-numbered as sub-section (1) thereof, and after

sub-section (1) as so re-numbered, the following sub-sections shall be inserted, namely:—

“(2) The Presiding Officer shall not be removed from his office except by an order made by the President on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the High Court in which such Presiding Officer had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(3) The Central Government may, by rules, regulate the procedure for the investigation of misbehaviour or incapacity of the presiding Officer.”.

5. *Amendment of section 16.*— In section 16 of the principal Act, in sub-section (1),—

(i) in clause (c), the word “or” occurring at the end shall be omitted;

(ii) clause (d) and the *Explanation* thereto shall be omitted.

6. *Repeal and saving.*— (1) The Employees’ Provident Funds and Miscellaneous Provisions (Amendment) Second Ordinance, 1997, is hereby repealed. Ord. 25 of 1997.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the Ordinance so repealed, shall be deemed to have been done or taken under the principal Act, as amended by this Ordinance.

K. R. NARAYANAN,
President.

RAGHBIR SINGH,
Secy. to the Govt. of India.

Department of Revenue

Order

3/1/94-RD(4547)

Read:- Government Order No. 7729, dated 14-1-1960.

In exercise of the powers conferred by Articles 17 to 20 of the Legislative Diploma No. 1898 dated 29-5-1959 and all other powers enabling it in that behalf, the Government of Goa hereby amends the Government Order No. 7729 dated 14-1-1960 (hereinafter called the ‘said Order’), as follows, namely:—

For the Schedule annexed to the said Order, the following shall be substituted, namely:—

“SCHEDULE

Designation	Group of Schedule I annexed to Decree No. 40,709	Taluka	No. of posts	Revised fixed pay in Rs.
1	2	3	4	5
Staff of the Cadre				
(a) <i>Junior Clerk</i> (amanuenses)	U-	Ponda	1	2000/-
(i) “L. D. C.”				
(ii) — do —	U	Bicholim	1	2000/-
(iii) — do —	U	Canacona	1	1000/-
(b) <i>Daily rated</i> (assalariado)				
(i) “Peon”	Z	Ponda	1	1000/-

By order and in the name of the Governor of Goa.

L. F. Correia, Under Secretary (Revenue).

Panaji, 1st July, 1998.